Frank case

ANTI-SEMITISM AND THE LEO M. FRANK MURDER CASE

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A memorandum for Alex Miller,
and the Anti-Defamation League of
the B'nai Brith upon some aspects
of the case and its consequences.

by DeWitt H. Roberts

The trial of Leo M. Frank was concluded more than forty years ago. Many articles, books, pamphlets and memoranda have been written in the intervening period. Most of these have been devoted to a discussion of the murder of Mary Phagan, to a search of the record to determine whether the evidence justified a verdict of guilty in a legal sense, and to speculation as to whether the defendant might have committed the crime.

In most of these studies, which rely all too heavily upon the transcript of the evidence and upon private documentation, the case has been torn from its context completely. Some time relationships have been grossly distorted. The social, economic and political contemporaneous events have been relentlessly disregarded, as if Mary Phagan, Leo Frank, Jim Conley, the battery of trial lawyers, and the unhappy Judge Roan lived in a vacuum. Georgia of 1913 has been equated variously with Georgia of 1900 and with Georgia of 1928 and with Georgia of 1950; in no instance has it been equated with its own date.

This treatment does not undertake to solve the mystery surrounding the murder of Mary Phagan. Only in passing is it related to the guilt or innocence of Leo Frank. Only in passing is it concerned with the mishandling of his defense. It is concerned with the personal prejudice that developed

toward Frank only as it is important in the aspect of its transference to the entire Jewish community.

The function of this brief treatment is clarification of the background, so that the essential questions can be determined. These are:

1. How and at what point did anti-Semitism enter the case?
2. How did the Jewish community fail, not Frank, but itself?
3. Could a similar thing happen in Georgia today, and, if so, where?
4. What should and could the Jewish community do in such a case?

To answer these questions even partially, it is sometimes necessary to go far-afield, to explore various by-paths, to reconstruct with greater accuracy than heretofore the period in which the events took place, to rectify the chronology frequently assumed, and to interpret the prejudices of 1913 in terms of that day instead of a later period.

Regretably, except for a few valueless journalistic treatments, most studies of the Frank case have been made by specialists in the law or in social science. The former have assumed a legal climate essentially different from that actually prevailing. The latter have failed in their reconstruction of the socio-economic structure of 1913 Georgia. Both have wanted experience in public affairs, and both have misunderstood completely the role of the newspapers of Atlanta, as factional organs, and of the Atlanta Jewish community.

The Chronology of the Case

1913

April 26	Murder of Mary Phagan; Saturday; Memorial Day.
April 27	Body found, 3:30 A.M.; Frank called, 7 A.M. and urges immediate arrest of Jim Conley and J.M.Gantt.
April 28	Frank asks Herbert Hass to protect interest of company, and engages Pinkerton detectives. Coroner calls jury.
April 29	Investigation continues until . . .
May 1	Epps youth accuses Frank of attentions to Mary Phagan
May 2	Col. Thos. Felder enters case, and seeks funds to hire W.J.Burns for investigation. Milton Klein issues statement.
May 3	Sol.Gen. Dorsey takes over investigation; Frank denies making confession
May 6	Coroner's jury resumes hearing; Frank testifies; Rosser enters case as his attorney. Frank and Newt Lee held.
May 24	Frank Indicted; Conley "confession" revealed
July 28	Trial opens
Aug. 25	Frank found guilty

1914

Feb. 17	State Supreme Court affirms lower court's action

1915

April 19	U.S.Supreme Court renders decision.
April 22	Judge B.H.Hill denies extraordinary motion for new trial
June 9	Prison Commission, with one dissent, refuses action.
June 21	Sentence commuted by Gov. Slaton
Aug. 16	Mob breaks into State Prison; Frank lynched near Marietta

Georgia in 1913

Social & Economic: The State was in the midst of very bad times. The banks were having difficulty in financing the cotton crop, and large Federal deposits to assist them had been promised by Pres. Wilson, who had recently taken office. The State was predominantly agricultural. Employment of women in industry, except textiles, was exceptional except in a very few places.

The Jewish Community: Georgia had the largest Jewish population in the Southeast, a condition that had existed almost from Colonial days, since this was the only wholly secular colony and the only one except Rhode Island in which they enjoyed full political rights. The Jewish population in Georgia, proportionately, was four times as large as that in South Carolina, North Carolina, Mississippi or Alabama. The Atlanta Jewish community, though newer, less integrated with the community, and possibly less influential that those in Savannah and Albany, for example, was probably in about the same ratio to the population as today. There had never been any outbreak of anti-Semitism in the State at any time.

Georgia Politics: At the time of the murder, Joseph M. Brown was Governor; he was succeeded, about the time the trial opened, by John M. Slaton. Watson was influential as a balance of power in many State races, but the fight was chiefly between the Smith and Brown factions.

Atlanta Politics: James Woodward, Mayor of Atlanta, was engaged in his perennial war with Chief-of-Police Beavers. "Vice" was the major issue, with various side-scandals in municipal affairs.

The Newspapers: Dominant was the Constitution, owned by the Howell family, and bitterly antagonistic to Senator Hoke Smith's faction. Locally it supported Beavers. Dorsey was a protege. The Journal, rapidly growing, was owned by the Gray family, although it was the political organ

of the Smith faction. It was somewhat anti-Beavers, but, for reasons of respectability was not a Woodward supporter openly. The Georgian had recently been acquired from the Seely interests by Hearst, who had provided it with the finest staff of any paper in the country, drawn from his New York, Chicago, Boston and Los Angeles papers. The Constitution, as will be shown, assumed Frank's guilt. The Journal, it is believed because of inside information from certain of the anti-Beavers officers on the force, started with an anti-Frank attitude, but became, through those sources, convinced of his innocence. The Georgian played the case in a spectacular manner, with utter recklessness that probably hurt the defendant, but without actual bias in its writing.

Attitude of Public: Frank's guilt seems to have been assumed from the first, probably based upon the Constitution's highly exaggerated stories. Five prominent members of the Jewish community served in the list of twenty-three grand jurors indicting him, and voted for the indictment. Apparently, except for close personal associates, his family and in-laws, Herbert Haas, some members of the Journal staff, a few anti-Beavers officers, and Rabbi Marx, no one believed Frank innocent until after his conviction. The clumsy efforts of the defense, the lurid accounts of the crime and the trial, the want of sophistication of the community and its press, the stories in all papers on child-labor, white slavery, vice and similar topics, the exceptional talents of Asst. Sol.Gen. E.A.Stephens, who prepared the case for the prosecution, the personality of the defendant - all these made it incredably difficult for the public to accept a theory of Frank's innocence. The initial prejudice against him was as a "foreign exploiter of our young women"; next it became a prejudice against a "voluptious Sodomite"; finally it became "a rich man trying to buy his way out of killing a poor girl".

The Newspaper Coverage

The coverage of the murder and the preliminary investigations were sensational, but did not become prejudicial to Frank until May 1. On that date, the Constitution gave sensational display to a charge by George Epps, a boy of about Mary Phagan's age who claimed, and later testified, that he rode to Atlanta from Marietta with her on the day of the murder, that Frank had "paid attentions" to the slain girl. On the following day, Milton Klein's statement of confidence in Frank was given a rather snide play, while the Felder efforts to get Burns to make an investigation were given attention. On May 3, while featuring the story that the Solicitor General was taking over the investigation, the Constitution carried a story captioned: "Frank Denies Confession".

On the following day, a Sunday, May 4, the Constitution carried a full page feature on the murder, while the front page featured a head:

Fake Detectives;

Impostors Busy

In Sleuth Roles

In Phagan Case

This story suggested by innuendo that the fake detectives were in the employ of Frank or his friends. Undeniably, such persons had forced their way into the home of the murdered girl's mother and step-father and had questioned other witnesses.

Headlines as they appeared on subsequent crucial days before the trial are cited below. From April 27 until June 4, a period of 39 days, the murder story remained on the front page. It moved inside briefly, with daily stories of some kind, until the opening of the trial.

Files of the Georgian are not fully available; its stories, while sensational, cut in both directions. The Journal never printed immoderate accounts, although its handling of its "exclusive" on the Felder dictophone expose probable damaged the defense badly. The Constitution, however, persistently assumed Frank's guilt.

Sleuths Believe
They can Convict
Phagan Murderer n — Constitution, Monday, May 5.

Quinn Declares That Officers
Accused Him of Being Bribed
To Come to Aid of Superintendent — Constitution, May 6
(coroner's inquest story)

Officials Plan
To Exhume Body — Constitution, May 7

Chief (of Detectives) Lanford
Reports Someone
Bribing Witnesses,
Planting Evidence — Constitution, May 8

The Constituion of May 9 featured charges that Frank had made improper advances to many female employees. On May 12 it featured the defense employment of Pinkerton detectives. On May 15, it featured a story implying that Mary Phagan expected to be murdered and had prepared an "identification paper" for her purse. On May 16, it supported Felder's idea of getting in Burns by popular subscription. Some headlines were:

Girl Will Swear Office
Of Frank was Vacant
Between 12:05 and 12:15 — Constitution, May 10

Officer Swears
He Found Frank
With Young Girl — Constitution, May 11

In Loop of Death
Dorsey May Have
Clue to Murderer — Constitution, May 17

This Contrasts with the Journal head for May 17:

Phagan Case Will
Go to Jury In
Present Form

Documentary Evidence
Sufficient to Convict,
Says Chief Lanford — Constitution, May 18

Rooming House
Sought by Frank,
Declares Woman — Constitution, May 23

This story was especially prejudicial to the defense: the woman, impliedly the operator of a house of assignation, claimed that Frank called her on the day of the murder and sought to engage a room. On the same date, May 23, the Journal obtained an exclusive break on the efforts of Col. Felder to obtain affidavits given by the mother and step-father of the slain girl. On May 24, the date the indictment was returned, the Conley confession, the indictment and the following were featured in the Constitution:

Frank not at Home
Hours on Saturday,
Declares Lanford — Constitution, May 24

Frank Guilty - Lanford — Constitution, Sunday, May 25

Scott Says
Frank Guilty — Constitution, May 26
(Scott was head of the Pinkerton office, employed by Frank)

Burns Agency
Quits Case — Constitution, May 27

Conley Says He Helped Frank Carry
Body of Mary Phagan to Cellar — (Full page streamer) Constitution, May 30

Mary Phagan Murder Work of Negro,
Says Leo M. Frank — Constitution, May 31

The bordello keeper's story crept back into the news presently. Her testimony was not used: first, because it was inadmissible; second, because it was at complete variance with all the other State evidence. But it had prejudicial value:

Frank Asked Room
To Conceal Body,
Believes Lanford — Constitution, June 2

The mistress of the house of assignation then vanished, but the Constitution hailed her return on June 19: "Mrs. Formby Here for Phagan Trial".

In the meantime, on June 3, Minola M'Knight, a servant in the Frank home, had been released after four weeks of questioning. Mrs. Frank issued a statement, deploring police methods, which was featured by the Constitution under the following:

Dorsey Replies
To the Charges
Of Mrs. L.Frank — Constitution, June 3

The Georgian meantime had printed a story suggesting that Leo Frank had been bigamously married in Brooklyn, which was refuted by the Journal. The story did not appear in the Constitution.

From June 4, until the opening of the trial, the papers carried few stories. With its opening on July 28, all papers had a field day. The Journal relied largely on courtroom sketches; the Constitution and Georgian had photographers.

The Constitution's front page of August 29 was garnished with a six column picture of the court room, showing six lawyers and various other persons at the defense table.

The Constitution apparently had no doubts as to Frank's guilt. In addition, it was strongly pro-Beavers and was a sponsor for Solicitor General Dorsey, whom it afterward supported for Governor (1916, successfully) and for Senator (1920, unsuccessfully) The Georgian played both sides luridly, leaning to the prosecution. The Journal, which had seemed to accept the community verdict of Frank's guilt, but which had been moderate in its coverage, seems to have become convinced of his innocence on May 21, and took a moderate but partisan position thereafter in the handling of the news of the case.

Contrasting handling of the stories speaks from the headlines:

Conley's Main Story Still
Remains Unshaken — (1 line, 8 col. streamer)

Grilled 12 Hours
By Luther Rosser,
Jim Conley Insists
Frank Guilty Man — Constitution, Wed., Aug. 6

Dalton Tells About
Visits Paid Pencil
Factory With Women — Constitution, Friday, Aug. 8

The Sunday stories were more moderate, but, probably by chance, a violently anti-Semitic article, with a London, England, dateline appeared in the Constitution: "Lord Newton is fighting to make loan sharks use real names as Moses and Aaron". Since the defense was presenting evidence, the Constitution played the trial down somewhat, feating the testimony of Schiff, an employee.

The State had become committed to the theory that Frank was a sexual pervert, there being definite evidence that Mary Phagan had not been raped. So on Wednesday, August 13, the Constitution led off with a head: "Office boy asked whether Frank did not make advances to him". (This element will be discussed later)

The Constitution's headlined for Sunday, August 17, were:

"Serious Blow is Dealt Defense by Its Own Witness"

Girl Says Frank
Often Looked In
Dressing Rooms

Wealth of Frank's Relatives Injected
In Cross-Examination of Mother

On Thursday, August 21, as the evidence ended, the Constitution's front page displayed a picture of the most photogenic of the girls used by the State as rebuttal witnesses after Frank's character was put at stake by the defense. The picture was captioned: "Girls Tell Jury Frank's Character is Bad".

The drop-off head on the lead Sunday story, August 24, in the Constitution read:

"Solicitor Takes up Alibi of Prisoner, Picks it to Pieces; Tells About Minola McKnight (sic) Affidavit and Defends Detective Department. No Doubt Frank Dictated Murder Notes, He Declares."

The story on the verdict was not overplayed, but a feature showed the bias:

As Bells Tolled, Dorsey Closed
Magnificent Argument Which
Fastened Guilt on Frank — Constitution, Tues., Aug.26

The Journal's headlines reflect its belief in the innocence of the defendant. Some are quoted:

"Its Terrible for An Innocent
Man to be Charged With Crime" — Journal, Sunday, Aug.3
(This captioned a boxed story, leading the general trial story, and is a quotation from a brief interview with Leo M. Frank.)

Jim Conley's Memory Proved
Bad Under Cross-Examination — Tuesday, Aug.5

Sheriff Mangum Explains
Why he did not put
Handcuffs on Frank — Friday, Aug.8

Franks Story of Before and
After the Crime Corroborated — Thurs., Aug.14

Dalton Excoriated, Conley
Annihilated and Solicitor
Charged With Persecution — Friday, August 22

The story of Arnold's argument, which introduced the theme of racial and religious persecution, was treated exceptionally fully in the Journal of Thursday, August 21. Their story on the verdict, Monday, August 25, was strongly pro-defense, expressing the belief that Frank's friends would continue to have complete faith in his innocence.

Anti-Semitism Enters the Case

The verdict of the jury did three things. It sobered the press of Atlanta; the game, played between Dorsey-Hooper and Arnold-Rosser, was concluded, and it could be observed that the prize was the neck of a man. Secondly, it roused the Jewish community, heretofore very largely indifferent to Frank's fate. Thirdly, it touched off a tremendous outburst of anti-Semitism.

Some people began to consider the evidence impartially; others heard, as undoubtedly Judge Arthur G.Powell was to hear a little later, the quite possibly true story of Conley's confessions; both of these groups began to believe Frank innocent. On far less rational grounds, the Jewish community - in Atlanta, throughout the Southeast - assert his innocence.

It is possible to determine the precise moment when the public became conscious of Leo Frank's Jewishness. It is, however, quite improbable that more than two members of the jury were affected by the realization, for it was not obtrusive nor a major factor in his conviction. Nevertheless, it entered the trial during the cross-examination of the senior Mrs. Frank on Saturday, August 16. Mrs. Frank previously had irritated the Solicitor by interrupting him with an hysterical outburst during the examination of another witness, and in his cross-examination he turned to the theme of the family's "great wealth" and the fact that some relatives were "retired capitalists".

A few anti-Jewish expressions had been heard before, but it became obvious from that date forward that some of the prejudice against Frank had an anti-Semitic flavor. Reuben Arnold, attorney for the defense, in his opening argument turned to the theme, charging religious persecution as the basis for the prosecution. But although some members of the

mob outside the court room shrieked to "Hang the Jew", contemporary accounts and memories unaffected by the trauma of the subsequent events would be inclined to cause adoption of the view that even that cry did not evidence antipathy toward Frank because he was a Jew.

The anti-Semitic aspects entered the case with full violence only with the entrance of Thomas E. Watson into the picture. But ill-advised efforts on behalf of Frank while the State Supreme Court was considering the case prepared the path for Watson's advent.

It is generally believed that Watson caused Frank's death. In the sense that he provoked the lynch mob to action, that is true. But Watson made no comment upon the case in his magazine or newspaper until a month after the Supreme Court of Georgia had waded through the voluminous record and rationalized affirmation of the conviction. In no way did Watson take part in any of the events that preceded the trial, nor did he write anything during the trial.

But in March 1914, he struck with unmitigated venom.

Watson's political history, including his vendetta with the Atlanta Journal and Hoke Smith, is too well known to require any retelling. He had become almost the balance of power in State elections. He was, in 1914, conducting a mild sniping at Woodrow Wilson, whom he disliked, and a rabid campaign against the Pope, whom he termed "Jimmy Cheesy, a fat old dago who lives with voluptuous women". That, however, was mild language for one who called rival politicians "keepers of Negro concubines and minions of Rome".

It was probably the stand the Atlanta Journal took in demanding a new trial for Frank that precipitated Watson into the case with such energy. At any rate, culling over all the anti-Semitic literature of the ages, he produced a wealth of invective against the Jew.

Among his more original and vitriolic pieces were "Jesus was no Jew", "Leo Frank: A Jew Pervert", "The Jewish Conquests" and a serial upon the history of the Jews that is extraordinary for imaginative effort and provocative language; indeed, the lecherous monk with his breed of nuns was replaced in both publications* by the lecherous Jew with his haren of child-Christians.

The circulation of the Jeffersonian rose from 25,000 to 87,000.

The vehemence of the anti-Semitic campaign undoubtedly was very greatly stimulated by two factors: first, the natural but clumsy efforts of the Jewish community to save Frank; second, by the acute depression, which hit rural merchants more severely than any other class in Georgia.

As appeals for clemency came from the Texas and Tennessee legislatures and many other sources, as the courts debated the case and Mr. Justice Oliver Wendell Holmes was making his observations about due process of law to an unheeding majority, as the Prison Commission and Governor Slaton considered commutation, the fever of anti-Semitism increased.

In many rural communities there were handbills: "Buy your clothes from an American Store. Or shall your money go 'to buy Governors'". These appeared immediately after Governor Slaton acted.

On August 12, 1915, Watson wrote: "The next Jew who does what Frank did is going to get exactly the same thing that we give to Negro rapists".

On August 16, 1915, Frank was killed by the mob.

*See preceding page. Watson published Watson's Magazine, a monthly, and the Jeffersonian, a weekly.

The Mistakes of the Defense

The defense of Leo Frank was one of the most ill-conducted in the history of Georgia jurisprudence. The defendant made all possible mistakes in handling himself before his arrest. His attorneys completely misunderstood the nature of the evidence against him. His defense was handled by so many people, diverted into so many directions, that it is now impossible to determine responsibility.

It is certain that the defense counsel depended very heavily upon Judge Roan. The trial judge was eminently fair, but it was apparent that he did not think Frank guilty. His rulings leaned toward the defense on almost every close point. It is apparent that both Judge Roan and Frank's counsel expected a verdict of "not guilty", and that the absence of Frank and his lawyers from the court room when the verdict was brought in arose from that expectation.

Frank was less than candid with officers. A natural nervous shyness doubtless was the cause. His four-hour appearance on the witness stand was disingenuous in the extreme, and marked by a factual error (the statement that the noon whistle blew) that completed the case against him.

Undoubtedly some one interested in the defense employed dishonest detectives, and, possibly, induced at least one of the Pinkerton operatives to deviate from propriety; the action of Scott, head of the Pinkerton office, in declaring Frank guilty is explicable only on the theory either of police pressure or personal indignation at tampering with his staff. The mysterious "pay envelope", bearing not a single fingerprint of any kind - even a smudge, had to have been a plant.

It is uncertain whether friends of Frank were behind the insidious operations of Col. Thomas B. Felder, but the public so believed.

The presence of some seven lawyers and several relatives at the defense table prejudiced the jury. The fashionable dress of some of the Frank relatives was in too sharp contrast to the simple clothes that Stephens, the real genius of the prosecution, saw that Mary Phagan's mother wore.

Introduction of a horde of character witnesses by the defense was one of the three major mistakes of the actual trial. The Brooklyn and Texas delegations created prejudice; the local witnesses were compelled, upon cross-examination to admit that Frank "looked into the women's dressing room" -- a sure proof, in the eyes of a 1913 jury, of the charge of perversion.

> (Whether Frank was or was not tainted with a mild voyeurism can not be determined from the documentary evidence. It is not improbable, since the witnesses summoned on his behalf, all of whom testified to his good character and denied that he had made any 'advances' toemployees, also gave testimony that supports that view. On the other hand, Frank's explanation of his looking into the dressing room is consistent with the savage employer mores of 1913, and may have been completely true.)

The second major mistake made at the trial was the verbose cross-examination of Jim Conley. The Pettibone trials were close enough in time for Frank's attorneys to have known better.

The third major mistake was the parading of a spurious witness, one Mincey, before the jury during the cross-examination of Conley, and the subsequent failure to place him on the stand. Not having him testify was, however, wise enough; the State would have riddled both man and his "evidence" with ease, and has called some sixteen witnesses for the purpose, as Dorsey managed to inform the jury.

It is difficult, at first glance, to understand the mistakes made in organizing the case for trial.

However, a careful reading of actually contemporary documents and the application of even a slight knowledge of human nature will reveal precisely what happened.

The defendant was an acutely nervous individual, a newcomer to Atlanta without very many intimate friends. His life seems to have been very largely devoted to his family, including his wife's parents and other relatives. His one thought, and theirs, appears to have been: "How can we hush up this mess and avoid a scandal?" It is quite apparent that there was little or no consciousness of his danger until far too late.

As for his attorneys, the answer is even simpler. First, they were far too numerous. At the actual trial, there appear to have been but four attorneys-of-record: Messrs. Arnold, Rosser, Hopkins and Haas; but at least two or three more always occupied space at the defense table, and certainly at least seven or eight individual attorneys busied themselves with one or another aspect of the initial defense.

The leading counsel, Arnold and Rosser, were acknowledged powers as trial attorneys. They had handled many important cases. Arnold, a great figure before juries, had a marvelous range of forensic arguments. Rosser excelled on cross-examination. Undoubtedly they underestimated the skill with which Dorsey, guided by the technical genius of Stephens, had prepared the case. (Actually, the pair went into retirement for more than two weeks to map the trial. Not only were they prepared as to witnesses and cross-examination, but they perfected the timing with absolute skill. It was no accident that Dorsey's concluding peoration coincided with the bells of the Catholic Church a half-block away. Their handling of the prosecution was a masterpiece of meticulous detail. Dorsey certainly believed that Frank was not only guilty but a "monster of iniquity". Stephens, who dominated

the Solicitor-General office in Fulton county for more than thirty years under several chiefs, was an extraordinary character. He seldom touched a case until after indictment; he believed that the prosecuter's office was supposed to prosecute; he had the tenacity of Javert; he was the greatest expert on homecide law and the law of evidence in the South; he was wholly incorruptable; he was entirely without feeling or sentiment in the conduct of the office. Whether Stephens held any opinion at all about Frank's guilt or innocence could never be determined; discussing the case, almost twenty years later, he said: "The jury thought him guilty. The evidence authorized the verdict. When the appeal came down, I dismissed it from my mind".)

In addition, the defense attorneys, especially Rosser, appeared to desire to make this "big case" a demonstration of virtuosity. Pulled from the context of the trial, Rosser's cross-examination of Conley was a marvel of art. But the Negro had been coached far more competently than McNharland had coached Orchard, in the only comparable American trial. A different line of cross-examination would have predicted acquittal.

Arnold's injection of the race-religious issue into the trial was a matter of more calculated risk. With a different stage setting, it might well have succeeded. His speech was intense, brilliant and moving. Considering his temperament, he could not have made a better one. Had he been Frank's only attorney, had the defense rested its case wholly on Frank's unsworn testimony and a different type of cross-examination, if the ninety-nine character witnesses not prejudiced the jury already, had Arnold, Frank and his wife been the only occupants of the defense table, the Arnold speech might well have swept the jury to an acquittal. Of the entire group of defense attorneys and official and unofficial advisers, only Arnold seems to have apprehended any of the true atmosphere of the trial.

The Appeal and Thereafter

Frank would have been well advised to have dismissed all the attorneys who participated in the trial and predicated his appeal solely on the issue of his absence from the court room when the jury returned the verdict. Under these circumstances, it is possible that a new trial might have been directed. In general, the rulings of the trial Judge had been favorable to the defense. Although some members of the highest court felt otherwise, the case could not properly, under Georgia precedents, have been reversed on the general grounds, i.e. that the verdict was not supported by the evidence.

Similarly, in the appeal to the U.S.Supreme Court from the denial of the writ of habeas corpus in the Northern District of Georgia (Frank v. Mangum) the present tendency is to consider the current interpretation of "due process" instead of that prevailing in 1913. Likewise, the Frank case is not clearly distinguished from subsequent "due process" cases in which a somewhat different doctrine was enunciated; Frank's attorneys had not sought a mistrial because of the outrageous clamor of the mob, and under the chain of decisions relied upon by the U.S.Supreme Court, he could not invoke his constitutional rights belatedly. That was the general concept the bar and courts held in 1913; it was erroneous, but the erroneous philosophy was not uncovered until more than a decade later, and Frank was not the only man to be convicted without genuine due process.

In some circles, the applications to various State legislatures for resolutions appealing to Georgia to grant Frank a new trial or commutation or a pardon have been severely criticized. Due to the belated interest in the case by the general Jewish community, it is true that this action was a fan to the flames of anti-Semitism and was something of a mistake; but it

necessary again to consider the emotional climate and the semantics of 1913. For example, the words 'nationalism', 'radical', 'Israel', to select but three examples, did not have the meanings of 1953. In 1913, States rights had no such meaning as in 1953, and States like individuals understood the meaning of the words 'a decent regard for the opinions of mankind' in the identical sense of the author.* Colorado probably would today take a far different attitude about "outside interference" in a parallel to the case of Joe Hill; it is very unlikely that the prison authorities of any State would permit the removal of an executed prisoner's body for the express purpose of spreading his ashes "where some flowers grow", or that the press would recount in detail such a dispersal of ashes in every State of the Union and in more than forty foreign countries. There were too many ashes at Dachau for men to be concerned longer, in this year of human progress, with the fate of one individual.

However, the open efforts to raise money for use in the Frank case was injurious. It provided the anti-Semite groups with arguments. Likewise, the silence of the Jewish community about the case until far too late, and its sudden concern after the conviction - while obviously now attributable to a reversal of attitude as to Frank's guilt - was interpreted as a mass decision that "none of the Chosen shall die for murdering a gentile girl".#

*The words appear in the Declaration of Independence.
One of the Jeffersonian articles contains this phrase.

A Minor Footnote on the Future

The explosions of the Populist and Free Silver period had brought the 'Negro question" to the attention of the South. Among the books most popular in the decade preceding and including the Frank trial were Thomas Dixon's The Clansman and The Leopard's Spots.

In the late summer of 1915, shortly after the lynching of Leo Frank, a small gathering of robed-and-hooded figures met on Stone Mountain and burned a cross.

Southern white, Gentile, Protestant womanhood henceforth would be protected from being forced into concubinage to the Negro, into the brothels maintained by Catholic monks, and into the harems maintained by lecherous Jews.

The Klan was created by naive men, intensely emotional. It did not remain their property long.

The Klan was born out of the murder of Mary Phagan and the lynching of a man who did not kill her. There is a certain irony in the fact that its death came because of the murder of Madge Oberholtzer at the hands o he Klan for Indiana.

Could the Frank Case be Repeated?

Could there be another Leo Frank case? That is the question that troubles seriously every member of a racial, ethnic, political or religious minority.

There are many changed factors. The legal background, especially as to what constitutes "due process of law", is vastly different. Police methods have improved immeasurably; blood-typing, fingerprint identification, chemical analysis of soils and dusts, handwriting analysis, and other scientific approaches to the solution of crime have become commonplace. If Frank were alive today, if there were a similar crime in Atlanta, the investigation of the case would take a totally different turn; his guilt or innocence would rest of less subjective factors than in 1913.

Likewise there is a greater sophistication. In 1913, only Savannah among Georgia cities had a truly urban background; Atlanta's population was swollen by a rural influx. In 1913, the names of Freud, Kraft-Ebbing, Jung and Kinsey were not household words. In 1913, the socio-industrial pattern did not provide for the employment of 54% of all women in Atlanta, more than half of them in industry. In 1913, newspapers were generally wholly irresponsible in the coverage of crime, which was a diversion somewhat similar to television; the spectacular methods of Pulitzer, the smug pornography of Bennett, the mercurial sensationalism of Hearst dominated press thinking.

Likewise, the Jewish community has (1) a greater unity; (2) added facilities within their own ranks and within the general community with which to deal with such a problem; and (3) increased experience in combatting the forces of prejudice.

Therefore, it would appear superficially that there could not be a repetition of the Frank case. But beneath the surface . . .

There are areas in the United States, especially in parts of New England, on the Pacific Coast, and in the newly industrialized rural-urban fringe areas of the Southeast, where a reasonable facsimile of the Frank case could occur. Of these regions, the Pacific Coast is inviting because of the presence of irresponsible smalltown newspapers; the West Coast of Florida because of the impact of industrialization within the citrus industry and a hostility toward the East Coast, and because of probably the highest incidence of latent anti-Semitism to be found outside a few areas in New England.

A depression, with economic stresses in operation in emotional areas, could produce a dangerous condition.

How Can This be Avoided?

In the combatting of overt anti-Semitism, the Anti-Defamation League has been extraordinarily effective. It has been able to mobilize its natural allies among the Protestant and Catholic clergy, among groups zealous in the defense of civil rights, and among those who abhor intolerance and injustice.

But while the Jewish community can protect itself more effectively than before, when it is attacked, it is obvious that the solution lies partly in yet another field.

Had the Jews of Atlanta looked into the Frank case before it was too late, the situation would have been vastly different.

Had not the Jews of Atlanta taken, quite generally, the attitude that Frank was unquestionably guilty, until his cause became their cause because they too were attacked, the flames of bigotry would have expired.

If anybody had listened to Leo Frank . . .

Conclusion

No one listened to Leo Frank.

Almost from the day of his arrest until eleven months later, there were very few who concerned themselves with the question of his innocence. He was shunned as one who had brought shame and disaster on his coreligionists. There was no true appraisal of the case; his guilt - the guilt of a man who was a 'moral monster', a 'pervert', a 'sex fiend', a man who habitually consorted with lewd women - was assumed. That he was none of these things, and that not a single fact was ever produced to support the wild charges made in the press, never occurred to anyone until he had been found guilty and until that guilt had been transferred to the Jewish community as a whole.

Since his death, Leo Frank has been received, as the victim of a legal blunder and subsequently of a lynch mob, into the Jewish hagiology, and most of the events of 1913 inconsistent with that viewpoint have been thrust out of the mind, together with the guilt of his contemporaries. He is denied the humanity of being a very frightened, myopic, nervous, twitching, perhaps slightly unpleasant young man from Brooklyn; he is a cause celebre, and not a man who was alone, a stranger and afraid . . .

"It is terrible for an innocent man to be charged with crime . . ."